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OPPOSITION BRIEF

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1957

No. 708 Misc.

LeROY ADOLPH LEICK, Petitioner,

vs.

THE PEOPLE OF THE STATE OF COLORADO,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of Colorado

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1957

No. 708 Misc.

LeROY ADOLPH LEICK, Petitioner,

vs.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari to the Supreme Court of Colorado

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BRIEF OF RESPONDENT

STATEMENT OF THE CASE

Review is sought by petition for writ of certiorari to the Supreme Court of the State of Colorado to the judgment rendered by that Court in the case of Leick

v. People. The opinion of the Colorado Supreme Court was rendered January 13, 1958, and is reported in 322 P. (2d) 674. A rehearing was denied without opinion and remittitur issued March 24, 1958. On March 28, 1958, counsel for petitioner requested a stay of execution from the Colorado Supreme Court, which stay was granted to July 21, 1958. Counsel for petitioner on the same date also requested leave of the Supreme Court of Colorado to withdraw the record and exhibits so as to prepare his petition to the United States Supreme Court. Said petition, together with a petition for leave to proceed in forma pauperis, has now been filed in this Court. In the meantime, the record was forwarded to the clerk of the U. S. Supreme Court. The record has not been available to this office in the preparation of this brief.

ARGUMENT

I.

THE REVISED RULES OF THIS COURT HAVE NOT BEEN COMPLIED WITH

This Honorable Court has promulgated a number of rules concerning review on writ of certiorari (Revised Rules of U. S. Supreme Court, Title 28, U. S. C. A.). Rule 21(1), Rule 33, and Rule 53(3) require service of the petition on the adverse party. It would seem that these rules would require that an exact and complete copy be served. In the instant case, no affidavit in support of the petition for leave to proceed in forma pauperis was served upon the Attorney General of Colorado. Furthermore, although the petition refers to Appendix A, B, and C, no such appendices were attached to the copy of the petition served upon the Attorney General.

The attention of the Court is further directed to the fact that the record which has been submitted to this Court is not certified, as required by Rule 21 (1).

Rule 23 (1) sets forth the order and items which the petition for writ of certiorari shall contain. This rule is very clear, concise, and complete. However, the instant petition fails to comply with said rule in that all matters required by the rule are not set forth and are not in the order required by the rule. Rule 23 (4) requires that the petitioner present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration. We doubt the accuracy of many of the statements made by petitioner. As an example, we point out the contention made at page 4 of the petition that "Most of the prospective jurors evidenced prejudice against petitioner as to his guilt on the charge of murder. In every case, the trial court overruled petitioner's challenge for cause, forcing counsel for the petitioner to exhaust all of his peremptory challenges and accepting at least some biased and prejudiced jurors." The true facts are that seven of the entire panel of jurors who were to try the issue of sanity evidenced an opinion, based on publicity concerning petitioner, of his guilt of the charge of murder. Each such juror expressed such an opinion only after counsel for petitioner in his voir dire examination admitted that the petitioner participated in the crime and had something to do with the death of his wife. All but one of them (Traylor) stated they had no opinion as to his sanity and could and would determine that issue on the basis of the evidence deduced at the trial and based on the law. Mr. Traylor was excused by the Court without the necessity of a challenge for cause. Of the remaining challenged jurors, one was peremptorily challenged by the district attorney, four were peremptorily

challenged by the defense, and one was the thirteenth juror, who did not sit with the jury which rendered the verdict.

There are other inaccuracies in the petition, but the above will serve to illustrate the lack of accuracy in the presentment to this Court. Moreover, it would appear that the counsel for the petitioner has overdone the requirement of brevity. The petition purportedly sets forth in eleven pages not only the facts, but the argument as well, in a case in which the record consists of 4057 folios. Furthermore, as has been the situation throughout this case, the points requiring consideration are not set forth with clearness. At page 24 of the Colorado Supreme Court's opinion written by Mr. Justice Frantz, it is stated:

> "Since we are not certain of the real meaning of this assignment, we will consider another element of it."

We, too, were uncertain of the real meaning of the assignments of error in the Colorado Supreme Court, and have the same difficulty with this petition.

Failure to comply with Rule 23 (4) and the other requirements of this Court is sufficient reason for denying the petition.

United States v. Rimer, 220 U. S. 547, 55 L. Ed. 578, 31 S. Ct. 596;

Furness, Withy & Co. v. Yang-Tze Insurance Ass'n, 242 U. S. 430, 61 L. Ed. 409, 37 S. Ct. 141;

Houston Oil Co. v. Goodrich, 245 U. S. 440, 62 L. Ed. 385, 38 S. Ct. 140;

Magnum Import Co. v. Coty, 262 U.S. 159, 67 L. Ed. 922, 43 S. Ct. 531;

Southern Power Co. v. No. Carolina Public Service Co., 263 U. S. 508, 68 L. Ed. 413, 44 S. Ct. 164.

II.

PETITIONER HAS FAILED TO COMPLY WITH REVISED RULE 19 (1)(a).

Rule 19 (1)(a) is as follows:

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

Apparently, it is left to the imagination to determine precisely what reason there is for the granting of the petition for a writ of certiorari.

In the petition, there is reference to a Colorado statute, a copy of which is apparently attached to the original petition as Appendix C. As previously stated, Appendix C did not accompany the petition served on us. The inadequacy of the citation to said statute appearing on page 1 of the petition leaves us in some doubt as to the particular provision to which he refers. We are left to infer that the statute to which he refers is Chapter 39, Article 8, Sections 1 through 6, 1953 Colorado Revised Statutes, as amended by the Colorado Session Laws for 1955, pages 276, 277, and 278. In this connection, we direct the Court's attention to the fact that this statute was again amended by the Colorado General Assembly in 1957, as set forth in the Colorado Session Laws for 1957, page 325. A copy of said amendment is attached hereto as Appendix A.

a federal question of substance for determination by this Court.

Assuming for the moment that a federal question is presented, has it been heretofore determined by this Court and, if so, is the Colorado Supreme Court's decision in conflict therewith? We believe the first question to be answerable in the affirmative, and the latter question to be answerable in the negative.

Nowhere in the petition is there any authority cited. We are left to assume then that the federal question presented has not heretofore been determined by this Court. This Court has rendered a number of decisions dealing with the qualifications and competency of jurors, among which are:

Jugiro v. Brush, 11 S. Ct. 770, 35 L. Ed. 510, 140 U. S. 291;

Reynolds v. U. S., 98 U. S. 145, 25 L. Ed. 244;

Spies v. Ill., 8 S. Ct. 21, 31 L. Ed. 80, 123 U. S. 131;

Theid v. Utah, 16 S. Ct. 62, 40 L. Ed. 237, 159 U. S. 510;

Connors v. U. S., 15 S. Ct. 951, 39 L. Ed. 1023, 158 U. S. 408;

Buchalter v. N. Y., 319 U. S. 427, 87 L. Ed. 1492;

Holt v. U. S., 218 U. S. 245, 54 L. Ed. 1021;

Hopt v. Utah, 7 S. Ct. 614, 30 L. Ed. 708, 120 U. S. 430.

We further assert, based on these and other cases, that the decision of the Colorado Supreme Court is in accord with the decisions of this Court.

CONCLUSION

Since the petition is not in conformity with the applicable rules of this Court, and since it fails to present any special or important reason as defined in Rule 19(1)(a), for the issuance of a writ of certiorari to the Colorado Supreme Court, certiorari should be denied.

Respectfully submitted,

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APPENDIX 1

Colo. Session Laws, 1957, Chapter 119:

Section 1. 39-8-3, Colorado Revised Statutes 1953, as amended, is hereby amended to read as follows:

39-8-3, Procedure after plea—(1) When a defendant pleads not guilty by reason of insanity at the time of the alleged commission of the crime, and joins with it another plea or pleas not involving insanity, including the plea of not guilty, after the period of observation, the case, in the discretion of the court, may be either set for trial on the insanity issue alone, or may be set for one trial upon all issues raised by all pleas entered.

(2) Nothing in this act shall be held to apply to, or in any manner affect, any indictment, information, arraignment, trial, conviction, judgment or sentence, or any writ of error or other proceeding in cases now pending in any court in this state; but the same shall be held and conducted and adjudged as provided by the law now in force before this act shall take effect. Any offense which shall have been committed before this act takes effect shall be prosecuted and punished in accordance with the law in force at the time such offense was committed.

Section 2.—Safety Clause—The General Assembly hereby finds, determines and declares that this act is necessary for the immediate preservation of the public peace, health and safety.

Approved: May 1, 1957.